

This is the fourth appeal in this case. The Board issued a decision on February 19, 2004 which reversed an August 22, 2003 Office decision on the grounds that the Office improperly

terminated appellant's compensation effective August 20, 2003 because she neglected to work after suitable work was offered to her.¹ The Board noted that the evidence of record was unclear as to whether the position was open and available to appellant. On September 22, 2005 the Board reversed an April 5, 2005 Office decision which terminated appellant's compensation effective April 5, 2005.² The Board found that the Office failed to develop the evidence regarding whether suitable employment was available in appellant's commuting area of Bowling Green, NC. The Board issued a decision on June 2, 2008 affirming an Office hearing representative's April 30, 2007 decision which terminated appellant's wage-loss compensation on the grounds that she refused an offer of suitable work.³ The facts and the circumstances of the case up to that point are set forth in the Board's prior decision and are incorporated herein by reference.

In a letter dated June 10, 2008, appellant requested reconsideration and submitted an April 13, 2008 lumbar spine x-ray interpretation which noted degenerative changes at L4-5 and L5-S1.

In a July 7, 2008 decision, the Office determined that appellant's application for reconsideration was insufficient to warrant further merit review of the claim

LEGAL PRECEDENT

The Federal Employees' Compensation Act⁴ provides that the Office may review an award for or against payment of compensation at any time on its own motion or upon application.⁵ The employee shall exercise this right through a request to the district Office. The request, along with the supporting statements and evidence, is called the application for reconsideration.⁶

An employee (or representative) seeking reconsideration should send the application for reconsideration to the address as instructed by the Office in the final decision. The application for reconsideration, including all supporting documents, must be in writing and must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously

¹ Docket No. 03-2143 (issued February 19, 2004). On May 23, 2001 appellant, then a 52-year-old cashier, sustained shoulder, arm, back and neck injuries on May 20, 2001 while participating in a team exercise. The Office accepted the claim for thoracic strain, scalp/head contusion and left shoulder/arm contusion. Subsequently, the Office authorized left shoulder arthroscopy with subacromial decompression and bursectomy on May 14, 2002 and left shoulder arthroscopic surgery on November 26, 2002. Appellant worked intermittently from the date of the injury until June 26, 2001 and was subsequently placed on the automatic rolls for total disability.

² Docket No. 05-1254 (issued September 22, 2005).

³ Docket No. 07-1742 (issued June 2, 2008).

⁴ 5 U.S.C. § 8101 *et seq.*

⁵ *Id.* at § 8128(a). See *Tina M. Parrelli-Ball*, 57 ECAB 598 (2006).

⁶ 20 C.F.R. § 10.605.

considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.⁷

An application for reconsideration must be sent within one year of the date of the Office decision for which review is sought.⁸ A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁹

ANALYSIS

In a June 2, 2008 decision, the Board affirmed the termination of appellant's wage-loss compensation on the grounds that she had refused an offer of suitable work. On June 10, 2008 appellant filed a request for reconsideration before the Office and submitted an April 13, 2008 lumbar x-ray. The underlying issue is whether appellant could perform the duties of the modified sales checker position offered by the employing establishment.

The Board finds that the Office properly refused to reopen appellant's case for further merit review. Appellant has not alleged or shown that the Office erroneously applied or interpreted a specific point of law, or advanced a relevant legal argument not previously considered by the Office.

Appellant also failed to satisfy the third regulatory requirement under section 10.606(b). She submitted an April 13, 2008 x-ray in support of her request. While the x-ray is new, it is not relevant or pertinent medical evidence pertaining to appellant's work capability. The underlying issue is whether the modified sales checker position is suitable. The April 13, 2008 x-ray interpretation provided no opinion as to appellant's capacity for work or address her ability of performing the position of modified sales checker. Evidence that does not address the particular issue involved does not warrant reopening a case for merit review.¹⁰

The Board finds that appellant is not entitled to a review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2). The Office properly denied her request for reconsideration.

CONCLUSION

The Board finds that the Office properly refused to reopen appellant's case for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

⁷ *Id.* at § 10.606. See *Susan A. Filkins*, 57 ECAB 630 (2006).

⁸ 20 C.F.R. § 10.607(a). See *Joseph R. Santos*, 57 ECAB 554 (2006).

⁹ 20 C.F.R. § 10.608(b). See *Candace A. Karkoff*, 56 ECAB 622 (2005).

¹⁰ *D'Wayne Avila*, 57 ECAB 642 (2006); *Freddie Mosley*, 54 ECAB 255 (2002).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 7, 2008 is affirmed.

Issued: April 16, 2009
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board